

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 469 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? - YES
 2. To be referred to the Reporter or not? - YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? - NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - NO
 5. Whether it is to be circulated to the Civil Judge? - NO
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DINESH KHEMCHAND PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner
MR MA PATEL, APP for Respondent No. 1
MR NANDI CHUDGAR for M/S. NANAVATI ASSOCIATES for
Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/09/98

ORAL JUDGEMENT

Heard learned Advocate Mr.Yatin Soni for the petitioner; learned Advocate Mr.Nandi Chudgar for M/s. Nanavati Associates on behalf of respondent no.2; and Mr.M.A.Patel, learned APP for respondent no.1.

The petitioner has challenged the legality, validity and propriety of the order passed by the learned Addl. Sessions Judge, Panchmahals, dated 8.8.1997 in the

proceedings of Criminal Appeal No.20 of 1996.

Respondent no.2 is the Manager of Gujarat Rajya Van Vikas Nigam, Dahod, Dist. Panchmahals, a public Corporation established under the provisions of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 (hereinafter referred to as 'the Act'). That on 17.8.1993, the staff members of respondent no.2 carried out a raid with striking force on the godown of the present petitioner and during the search, recovered an aggregate 31 bags of minor forest produce known as "Mhowra" flowers. The aggregate weight of the said article was 18.60 quintal. That a criminal complaint against the present petitioner was filed in the Court of JMFC, Jhalod, Dist. Panchmahals, under the provisions of Section 3(2) of the Act. It may be noted that the petitioner pleaded guilty for the said offence before the learned JMFC and thereby by vide order dated 22nd July 1996, the learned JMFC convicted the petitioner for the said offence under Section 3(2) read with Section 15 of the Act and ordered imprisonment till rising of the Court and to pay a fine of Rs.100/-. That as regards muddamal article, the Court passed the order to confiscate 10% of the muddamal Mhowra flowers recovered by respondent no.2 and produced in the Court and to return 90% of the said muddamal flowers to the present petitioner who was the accused of the said complaint.

That being aggrieved and dissatisfied by the said order of learned JMFC, Jhalod, passed on 22nd July 1996, in respect to muddamal Mhowra flowers, present respondent no.2 preferred Criminal Appeal No.20 of 1996 in the Court of Addl. Sessions Judge, Panchmahals, at Godhra. That vide the impugned order dated 8.8.1997, the learned Addl. Sessions Judge, Panchmahals, modified the order passed by the learned JMFC, Jhalod and directed to confiscate the entire quantity of muddamal Mhowra flowers for the reasons stated in the order.

Learned Advocate Mr.Yatin Soni contended on behalf of the petitioner that learned Addl. Sessions Judge has erred while passing the order of confiscating the entire quantity of muddamal Mhowra flowers which is a minor forest produce under the provisions of the Act. It is submitted by Mr.Soni that, in the facts and circumstances of the case, there was no offence committed by the present petitioner while possessing the disputed quantity of Mhowra flowers. Elaborating the submission, Mr.Soni referred to and relied upon the provisions of Section 3(2) of the Act and submitted that the provisions of sub-section (2) of Section 3 of the Act is subject to

the provisions of the Bombay Prohibition Act, 1949 (hereinafter referred to as 'the Prohibition Act'). It is further submitted that in view of the said preceding clause of sub-section (2) of Section 3 of the Act, it was lawful for petitioner to purchase minor forest produce from another person, because during the relevant period when the said raid was carried out in the go-down of the present petitioner, a vacation was declared by the State Government under the provisions of Section 60 of the Prohibition Act. Mr. Soni has referred to a true copy of the notification produced on record which is dated 12th July 1993, bearing reference No. OM/100/2575. The text of the said notification is as under:

"In exercise of the powers conferred by clause (d) of sub-section (1) of Section 139 of the Bombay Prohibition Act, 1949, (Bombay XXV of 1949), the Government of Gujarat, hereby exempts Mohawara flowers, which may be the produce of any years and of any areas from the provisions of sub-section (2), of Section-60, of the said Act, in so far as the said sub-section (2) relates to their collection, transport, sale, purchase of possession, in the area notified in column-2, of the schedule to Government Notification, Labour Social Welfare and Tribal Development Department, No.GH/L/196/MFL/1078/21435/(79)/M, dated the 17th March, 1979, for the period commencing on the date of the publication of this Order in the Official Gazette and ending on the 31st December 1993."

Referring to the contents of the notification, it is submitted by Mr.Soni that as there was a vacation; possession of Mhowra flower does not amount to an offence and respondent no.2 had no cause or power to prosecute the present petitioner for illegal possession or alleged transport of Mhowra flower under Section 3(2) read with Section 15 of the Act. That the said submission though lucid logic; could hardly be accepted on true interpretation of the provisions of Section 3(2) of the Act in the context of Section 60 of the Prohibition Act.

The provision of Section 3(2) of the Act is as under:

"2. Subject to the provisions of the Bombay Prohibition Act, 1949, it shall be lawful for --

(a) any person to sell any minor produce to,
or purchase any minor forest produce from, the

State Government, authorised officer or an agent;

(b) a grower to transport any minor forest produce grown by him from any place in a unit where such produce has been grown to a purchasing centre or depot set up in that unit under Section 8 or to any other place in that unit;

(c) (i) any person who has purchased any minor forest produce from the State Government, or an authorised officer or an agent, and,

(ii) any person who has purchased any minor forest produce from another person under clause (e)

to transport the same, in accordance with the terms and conditions specified in a permit issued by such authority and in such manner as may be prescribed, for the purpose of being used in the manufacture of finished goods within the State or for the purpose of sale outside the State, or for the purpose of re-sale to the State Government, an authorised officer or an agent;

(d) any person to import any minor forest produce or to transport the minor forest produce so imported, in accordance with the terms and conditions of a permit issued by such authority and in such manner as may be prescribed; and

(e) (i) any person, who has purchased any minor forest produce from the State Government or authorised officer, or an agent to sell such of the minor forest produce, as may be specified by the State Government by general or special order published in the Official Gazette, to any other person; and

(ii) other person to whom the minor forest produce is so offered for purchase to purchase the same,

in accordance with the terms and conditions specified in a permit issued to the seller for the purpose of sale and to the purchaser for the purpose of purchase, by such authority and in such manner as may be prescribed."

It may be noted that the preamble of the nationalisation Act states that the said Act is enacted to provide for

the nationalisation of trade in certain minor forest produce in the State of Gujarat. That under Section 9, Mhowra flower is declared as minor produce. As such, the object of the Act is to regulate and control the trade of Mhowra flower within the specified area of the State of Gujarat and thereby under Section 3, a restriction on sale, purchase or transport of minor forest produce is imposed and penalty is prescribed vide Section 15 for violation of the provisions of Section 3 of the Act.

That Section 60 of the Prohibition Act is as under:

"60. (1) No person shall export or import mhowra flowers except under a pass granted by the Collector or an officer authorised in this behalf.

(2) No person or head of household on his behalf or on behalf of the members of his household shall in the aggregate collect or transport or sell or buy or have in his possession mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the conditions of a licence, permit or pass granted by the Collector or an officer authorised in this behalf:

Provided that no licence, permit or pass shall be necessary for the collection, transport, sale, purchase, or possession within such area and during such period (hereinafter called vacation period) as the State Government may, by notification in the Official Gazette, notify, of any quantity of mhowra flowers which shall be the produce of that year and of that area:

Provided further that unless the State Government by a notification in the Official Gazette, otherwise directs, no licence, permit or pass shall be necessary for the transport by rail of any quantity of mhowra flowers through an area which has no vacation period or the vacation period for which has expired at the time when the transport takes place, provided that--

(i) the said flowers are not unloaded in transit, and

(ii) there is a vacation period at the place from which and to which the said flowers are

transported at the time when the said flowers are despatched or arrive as the case may be."

A mere perusal of the provision suggests that possession of Mhowra flower which is also an offence under the provisions of the Prohibition Act, 1949, has been exempted during certain period in certain area by declaring notification under Section 60 of the Prohibition Act. That above stated notification is issued under the provisions of the Prohibition Act, 1949 and as such, possession of Mhowra flowers may not be an offence under the provisions of the said Act, but per se, it cannot exempt the said possessed quantity of Mhowra flower from the regulatory provision of the nationalisation Act. In other words, even during the period of vacation declared under Section 60 of the Prohibition Act, 1949, any person who desired to purchase, sale or transport Mhowra flower, which is a minor forest produce under the nationalisation Act, could purchase, sale or transport under the provisions of the said Act which requires obtaining a permission from an authorised authority and purchase or sale could be made only through authorised person.

In the instant case, as per the statement recorded of the present petitioner, the disputed quantity of Mhowra flower was purchased from one Gopaldas Makhandas of Jhalod. However, said Gopaldas Makhandas, in his statement has stated that, though he has sold the said goods to the petitioner, he has not issued any bill. It is not the case of the petitioner that said Gopaldas Makhandas was an authorised agent appointed by respondent no.2 whereby he could legally sale or transport the Mhowra flower as a minor forest produce under the provisions of the nationalisation Act. In view of the same, on admission of the present petitioner that he has purchased the said Mhowra flowers from a person who was not authorised to sell, admittedly, has purchased and possessed Mhowra flowers which amounts to violation of the provisions of Section 3(2) of the Act and as per Section 15, the petitioner could be prosecuted for the same.

Learned Advocate Mr.Soni has also canvassed an argument that to confiscate the minor forest produce on violation of the provisions of the Act is a discretionary power under Section 15 of the Act and the Court ought to have exercised the discretion on a sound proposition of law. That learned JMFC had exercised the discretion of confiscating only 10% of the Mhowra flowers and had

returned 90% of the Mhowra flowers to the accused which order is modified by the learned Addl. Sessions Judge and has committed an error of law. It is difficult to accept the said submission. No discretion could be exercised contrary to the prescribed provisions of law. Thereby the error which was committed by the learned JMFC, Jhalod by returning 90% of the muddamal Mhowra flowers to the accused has rightly been rectified by the learned Addl. Sessions Judge, Panchmahals by ordering the confiscation of the entire quantity of the goods.

In view of the above stated discussion, on true interpretation of Section 3(2) of the Act, in my opinion, the petitioner had no right or authority to possess or transport the disputed quantity of Mhowra flower without any lawful permit issued by or on behalf of respondent no.2 and as such the learned Addl. Sessions Judge, Panchmahals has rightly ordered to confiscate the said muddamal article, Mhowra flowers.

On the basis of the above discussion, I hold that as there is no error of law in the impugned order, which is just, proper and reasonable, the petition is not maintainable at law and deserves to be rejected. The petition stands disposed of as rejected. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

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